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13 **UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA**

15 IN RE VOLKSWAGEN “CLEAN
16 DIESEL” MARKETING, SALES
17 PRACTICES, AND PRODUCTS
18 LIABILITY LITIGATION

19 This Document Relates to:

20 ALL ACTIONS

MDL No. 2672 CRB (JSC)

**PLAINTIFFS’ RESPONSE TO
PRETRIAL ORDER NO. 1
REGARDING SETTLEMENT
MASTER**

Hearing: December 22, 2015

Time: 8:00 a.m.

Courtroom: 6

The Honorable Charles R. Breyer

Pursuant to the Court’s Pretrial Order No. 1 (Dkt. No. 2), the above referenced Plaintiffs respectfully submit this response concerning the appointment of Special Settlement Masters in this MDL. Plaintiffs support the former judges and attorneys identified in the response by Cotchett, Pitre & McCarthy, LLP (Dkt. No. 12), specifically Hon. Charles B. Renfrew (Ret.), Hon. Vaughn R. Walker (Ret.), Hon. Rebecca J. Westerfield (Ret.), Kenneth R. Feinberg, Hon. Edward A. Infante (Ret.), and Hon. Fern M. Smith (Ret.). In addition, Plaintiffs request that the Court also consider Hon. John K. Trotter (Ret.) and John W. Perry, Jr., as Special Settlement Masters in this MDL.

1 The unique experience and special skills that each of these persons have would be
 2 invaluable in ultimately resolving this complex case. Volkswagen is represented by a
 3 network of talented and experienced counsel who can be expected to make every effort to
 4 minimize their client's liability and exposure. Plaintiffs believe the Court and the parties
 5 would benefit from the appointment of a *group* of two or more experienced Special
 6 Settlement Masters that could jointly manage the settlement complexities of this case,
 7 which include understanding the true number of affected vehicles; the degree to which
 8 software was coded to defeat emissions testing; the impact of the defeat devices on
 9 performance and fuel economy; the extent of vehicles' decrease in value as a result of the
 10 disclosure and existence of defeat devices and harm to the brand; the damages incurred
 11 by different groups of class members; the application of varying emissions standards and
 12 certification requirements; the laws of the different jurisdictions involved, including
 13 Germany; and the impact of regulatory actions in the U.S. and abroad.

14 Justice John K. Trotter¹ of JAMS is highly qualified to serve as Special Settlement
 15 Master in this litigation and has extensive experience handling class action and mass-tort
 16 litigation settlement proceedings in multidistrict litigation, including:

- 17 - *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices,*
 and Products Liability Litigation, No. 8:10-md-2151-JVS-FMO (C.D. Cal.);
- 19 - *In re: DePuy Orthopaedics Inc. ASR Hip Implant Products Liability Litigation*,
 No. 1:10-md-2197-DAK (N.D. Oh.);
- 21 - *In re: Zyprexa Products Liability Litigation*, No. 1:04-md-01596-JBW-RLM
 (E.D.N.Y); and
- 22 - *In re: Vioxx Products Liability Litigation*, No. 2:05-md-01657-EEF-DEK (E.D. La.).

23 In *Toyota*, *supra*, Justice Trotter assisted Judge James Selna with all aspects of the
 24 MDL litigation for a period of three years, which resulted in a settlement of \$1.6 billion
 25 for the economic loss cases, as well as settlement of individual personal injury and
 26 wrongful death cases.

28 ¹ A copy of Justice Trotter's *curriculum vitae* is attached hereto as Exhibit A.

1 Plaintiffs also believe that, in conjunction with one or more retired judges, the
 2 Court and parties would benefit from the appointment of a resolution specialist like John
 3 W. Perry, Jr², who has handled numerous claims-made settlements, including:

- 4 - *In re: General Motors LLC Ignition Switch Litigation* (“General Motors”), MDL
 5 No. 2543 (S.D.N.Y.) (current joint Special Master);
- 6 - *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on*
 7 *April 20, 2010*, MDL No. 2179 (E.D. La.) (Court-Designated Neutral);
- 8 - *In re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products*
 9 *Liability Litigation*, MDL No. 2100 (S.D. Ill.) (mediator); and
- 10 - *In re: Pradaxa (Dabigatran Etxilate) Products Liability Litigation* (“Pradaxa”),
 MDL No. 2385 (S.D. Ill.) (mediatior).

11 Having Special Settlement Masters with experience designing and implementing
 12 detailed claims processes and allocation grids whereby hundreds of thousands of
 13 plaintiffs submit their information will be critical in this case. For example, in
 14 *Deepwater Horizon*, Mr. Perry developed a methodology for allocating a \$2.3 billion
 15 settlement fund to thousands of seafood harvesters who suffered economic loss.

16 For all of the reasons aforementioned, Plaintiffs submit Hon. John K. Trotter (Ret.)
 17 and John W. Perry should be appointed as Special Settlement Masters.

18 Dated: December 15, 2015

Respectfully Submitted,

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 20 **ROBINSON CALCAGNIE ROBINSON**
SHAPIRO DAVIS, INC.

21 By: /s/ Mark P. Robinson, Jr.
 22 Mark P. Robinson, Jr.
 23 *Counsel for Plaintiffs*

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 28² A copy of Mr. Perry’s curriculum vitae is attached hereto as Exhibit B.

1 PROOF OF SERVICE

2 I am employed in the County of Orange, State of California. I am over the age
3 of 18 and not a party to the within action; my business address is 19 Corporate Plaza
4 Drive, Newport Beach, CA 92660.

5 On this day, I served the foregoing document described as

6 **PLAINTIFFS' RESPONSE TO PRETRIAL ORDER NO. 1 REGARDING**
7 **SETTLEMENT MASTER**

9 X VIA ECF: I caused the aforementioned document(s) to be filed via the
10 electronic Case Filing (ECF) system in the United States District Court for the
11 Northern District of California, on all parties registered for e-filing in MDL No. 2672
12 CRB (JSC); 3:15-md-02672-CRB. Counsel of record are required by the Court to be
13 registered e-filers, and as such are automatically e-served with a copy of the
14 documents upon confirmation of e-filing.

15 I declare under penalty of perjury, under the laws of the United States of
16 America, that the foregoing is true and correct.

17 Date: December 15, 2015

18 /s/ Mark P. Robinson, Jr.
Mark P. Robinson, Jr.